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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,482	01/20/2006	Eric Favre	WBL0003	2121
27268	7590	09/17/2009	EXAMINER	
BAKER & DANIELS LLP 300 NORTH MERIDIAN STREET SUITE 2700 INDIANAPOLIS, IN 46204			ALEXANDER, REGINALD	
			ART UNIT	PAPER NUMBER
			3742	
			NOTIFICATION DATE	DELIVERY MODE
			09/17/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

intear@bakerd.com  
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<b>Office Action Summary</b>	<b>Application No.</b> 10/565,482	<b>Applicant(s)</b> FAVRE ET AL.	
	<b>Examiner</b> Reginald L. Alexander	<b>Art Unit</b> 3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 18-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11, 12 and 18-27 is/are rejected.
- 7) ☒ Claim(s) 10 and 25 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

The subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention. Applicant is required to furnish a drawing under 37 CFR 1.81(c). No new matter may be introduced in the required drawing. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d).

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the smooth tapered spikes without sharp edges, as recited in claim 8 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

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application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 18-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recited method claims fail to further limit independent method claim 4, since the claims fail to recite any method steps for preparing a beverage.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11 and 12 are rejected under 35 U.S.C 103(a) as being unpatentable over Favre in view of Lin.

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There is disclosed in Favre a device for preparing a beverage, comprising a capsule carrier 9 comprising a bottom wall, an intermediate bottom wall in the form of a filtering wall 10 having a plurality of perforating spikes 22 and outflow orifices (col. 5, lines 47-52), and a lower cavity portion arranged between the filtering wall and the bottom wall wherein the bottom wall comprises an outflow channel 24 surrounded by lips which protrude upwards and have openings or slots 27 for flow of beverage out from the capsule carrier.

Lin discloses that it is known in the art to provide, at a bottom wall of a beverage material carrier, an outflow channel 33 surrounded by lips 32 which protrude upwards, the lips having slots enabling liquid to flow through the lips and to the channels.

It would have been obvious to one skilled in the art to provide the bottom wall of Favre with the surrounding lips and slots taught in Lin, in order to delay rate at which beverage leaves the device. Thus, allowing for a richer coffee flavor.

Claims 1, 2, 4, 5, 7, 18-24, 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beaulieu et al. in view of Fond et al. '987.

There is disclosed in Beaulieu a device for preparing a beverage from a capsule 50 containing a product to be brewed, the capsule including a flexible membrane 52 capable of significant elastic deformation (see fig. 6B), wherein the membrane is perforated by application of an injection head carrying a perforating member, and hot water injected onto the membrane and into the capsule and the membrane flexed in the direction of the hot water flow so as to compress the product within the capsule.

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Fond discloses the use of plural conical and tapered perforating spikes 44, 13 on an injection head, wherein a plurality of holes are provided to an outer membrane of a beverage product capsule by the spikes and hot water is provided to the interior of the capsule by application to the membrane and through the apertures.

It would have been obvious to one skilled in the art to provide the injection head of Beaulieu with the plurality of perforating spikes taught in Fond, in order to allow for a more even distribution of hot water to the product within the capsule.

The prior art appears to meet all of the claimed method steps (perforating a plurality of holes and injecting water). In regards to the size of the holes and its dependence upon the compactness of the product within the capsule, applicant fails to positively recite this as a method step for preparing and beverage. Additionally, it is apparent that the prior art would satisfy such a limitation if a proper amount of product were provided to the capsule. And the product amount is an obvious matter of design choice to a user.

Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beaulieu et al. in view of Fond et al. '987 as applied to claims above, and further in view of Park.

Park discloses an injection head 130 which has a shape which is convex. The convex surface contacts the brewing product and provides compaction thereof before the distribution of hot water thereto.

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It would have been obvious to one skilled in the art to provide the injection assembly of Beaulieu, as modified by Fond, with the convex injection head, in order to improve the compaction of the brewing product with the injection head surface and not just the flexing of the membrane.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fond et al. '595 in view of Bambi.

Fond discloses a beverage preparation device, comprising an injection head 1 comprising a perforating surface 24 provided with a plurality of perforating spikes 25 having smooth tapered surfaces in the shape of a cone, and at least one water channel 4 arranged to supply hot water onto the perforating surface.

Bambi discloses the use of a convex shaped water injection surface 9H, for applying a force to a brewing product within a filter container 11C.

It would have been obvious to one skilled in the art to modify the injection head perforating surface of Fond with that taught in Bambi, and provide a convex perforating surface, in order to improve the compaction of the brewing product and even distribution of hot water to the product.

In regards to the spikes not having sharp edges, it is apparent that the spikes of Fond do not have sharp side edges.

***Allowable Subject Matter***

Claims 10 and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed 29 July 2009 have been fully considered but they are not persuasive.

Applicant states that the perforating head of Fond is not compatible with the extraction device taught in Beaulieu because it is designed for use with a sachet holder having a specific configuration designed to fulfill specific functions of holding, shaping and retaining the shape of a flexible sachet. In responds to the statement it should be noted that the Fond reference is cited for its teaching of plural, tapered spikes as the perforating member. The shape and function of the perforating head is not of relevance.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Reginald L. Alexander/  
Primary Examiner  
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